

### REMARKS

The specification has been amended in a few minor formal respects.

Non-elected method claims 31-33 have been canceled without prejudice to the applicant's right to present the claimed subject matter in a divisional application. The remaining claims have not been amended. Claims 1-30 are in the application. Claim 1 is independent.

The applicant gratefully acknowledges the indication that dependent claim 19, and its associated claims 20-23, recite patentable subject matter. The applicant declines at this time to rewrite claim 19 in independent form because it is believed that all of the claims in the present application are patentable.

#### **Statement Re Common Ownership of Cited U.S. Patent No. 6,412,133**

U.S. Patent No. 6,412,133 to Erlich et al. is the primary reference in all of the rejections in the Office Action. However, Erlich is not available as prior art for rejections under 35 U.S.C. § 102(e)/§103 because at the time of the invention, the present application was subject to an obligation of assignment to Aqua Products, Inc., of Cedar Grove, NJ, the owner of the Erlich patent. See Manual of Patent Examining Procedure §706.02(l)(1).

#### **Erlich Does Not Anticipate Any Claims in the Present Application**

Claims 6, 7, 10, 12-17, 29 and 30 were rejected under 35 U.S.C. §103 in view of Erlich alone or when taken with U.S. Patent No. 5,435,031 to Minami et al. Pursuant to the above Statement Re Common Ownership, that rejection cannot be maintained.

As for remaining claims 1-5, 8, 9, 18 and 24-28, the Office Action contended that they are anticipated by Erlich. However, independent claim 1 in fact recites a combination of features not found in Erlich, which thus cannot anticipate claim 1 or any of its dependent claims.

Claim 1 is directed to a pool cleaning apparatus having a motion translating member (“mtm”) for contacting the surface of a wall of the pool or tank being cleaned. The mtm cooperates with other structure recited in the claim to provide an output that indicates whether or not the apparatus is moving. A programmable control device is programmed to change the apparatus’s direction of movement when the output indicates that it has not moved for a prescribed period of time.

The Office Action relies on the disclosure in Erlich at columns 21 and 22. For purposes of this discussion, there are at least five different devices embodied in the relevant disclosure of Erlich.

The first is discussed generally at column 21, line 45, to column 22, line 17. The arrangement discussed there uses a mercury switch to reverse direction of a pool cleaner. The disclosed arrangement does not include claim 1’s motion translating member for contacting the wall of the pool.

The second device is discussed at column 22, lines 19-37. It incorporates an automatic power shut-off mechanism that uses “a non-driven supporting wheel or an auxiliary wheel that is in contact with the pool surface on which the cleaner is moving.” Col. 22, lines 24-26. The wheel carries a magnet that indicates whether or not the wheel is moving. When the wheel stops, power to the cleaner motor is interrupted. A “reversing function” can also be

included “so that the cleaner resumes movement in the opposite direction.” Col. 22, lines 34-35. However, the device does not have a control device programmed to change the direction of movement when an output indicates a lack of movement for a prescribed period of time, as recited in claim 1.

The third device, discussed at column 22, lines 38-57, also relates to a power shut-off mechanism, but it detects cleaner movement with an impeller that is rotatable in response to movement of the cleaner through the water. When the impeller stops moving, the cleaner’s drive motor is turned off. Although the motor can be turned back on in the reverse direction after a predetermined delay, the device still suffers from the same deficiency as a reference as the first device: it does not include claim 1’s motion translating member for contacting the wall of the pool.

Fourth and fifth devices, also relating to power shut-off mechanisms, are discussed in Erlich at column 22, line 58, to column 23, line 17. They fail to anticipate claim 1 for at least the same reasons as the third device.

Moreover, several dependent claims that were rejected as anticipated by Erlich recite still more features not discussed in Erlich. For example, claim 2 defines a relationship between the period of the signal generated by the mtm and the recited “prescribed period of time.” Erlich fails to anticipate such a recitation. As another example, claim 18 calls for a support assembly for urging the mtm into contact with the wall surface being cleaned. Erlich also fails to anticipate that feature.

In conclusion, the applicant believes that independent claim 1, and its associated dependent claims 2-30, are patentable.

The applicant believes that this Amendment responds to all of the points raised in the Office Action and places the application, with claims 1-30, in condition for allowance.

Therefore, reconsideration of the present application and allowance is respectfully requested.

Any fees associated with this Amendment may be charged to Deposit Account No. 01-0035.

Correspondence should continue to be directed as shown below.

Respectfully submitted,

ABELMAN, FRAYNE & SCHWAB  
Attorneys for Applicant

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Thomas E. Spath  
Reg. No. 25,928  
150 East 42 Street  
New York, New York 10017  
Tel.: (212) 949-9022